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Connecticut Substitute House Bill No. 5585

Public Act No. 01-92

AN ACT CONCERNING THE USE OF TRANSACTION SCAN DEVICES BY SELLERS OF ALCOHOLIC LIQUOR AND TOBACCO AND THE IMPORTATION OF ALCOHOLIC LIQUOR.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 30-86 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) As used in this section:

(1) "Cardholder" means any person who presents a driver's license or an identity card to a permittee or permittee's agent or employee, to purchase or receive alcoholic liquor from such permittee or permittee's agent or employee;

(2) "Identity card" means an identification card issued in accordance with the provisions of section 1-1h;

(3) "Transaction scan" means the process by which a permittee or permittee's agent or employee checks, by means of a transaction scan device, the validity of a driver's license or an identity card; and

(4) "Transaction scan device" means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver's license or an identity card.

(b) Any permittee or any servant or agent of a permittee who sells or delivers alcoholic liquor to any minor, or to any intoxicated person, or to any habitual

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drunkard, knowing the person to be such an habitual drunkard, shall be subject to the penalties of section 30-113. Any person who sells, ships, delivers or gives any such liquors to such minor, by any means, including, but not limited to, the Internet or any other on-line computer network, except on the order of a practicing physician, shall be fined not more than one thousand five hundred dollars or imprisoned not more than eighteen months, or both. The provisions of this section shall not apply (1) to a sale, shipment or delivery made to a person over age eighteen who is an employee or permit holder under section 30-90a and where such sale, shipment or delivery is made in the course of such person's employment or business, (2) to a sale, shipment or delivery made in good faith to a minor who practices any deceit in the procurement of an identity card issued in accordance with the provisions of section 1-1h, who uses or exhibits any such identity card belonging to any other person or who uses or exhibits any such identity card that has been altered or tampered with in any way, or (3) to a shipment or delivery made to a minor by a parent, guardian or spouse of the minor, provided such parent, guardian or spouse has attained the age of twenty-one and provided such minor possesses such alcoholic liquor while accompanied by such parent, guardian or spouse.

(c) (1) A permittee or permittee's agent or employee may perform a transaction scan to check the validity of a driver's license or identity card presented by a cardholder as a condition for selling, giving away or otherwise distributing alcoholic liquor to the cardholder.

(2) If the information deciphered by the transaction scan performed under subdivision (1) of this subsection fails to match the information printed on the driver's license or identity card presented by the cardholder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the permittee nor any permittee's agent or employee shall sell, give away or otherwise distribute any alcoholic liquor to the cardholder.

(3) Subdivision (1) of this subsection does not preclude a permittee or permittee's agent or employee from using a transaction scan device to check the validity of a document presented as identification other than a driver's license or an identity card, if

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the document includes a bar code or magnetic strip that may be scanned by the device, as a condition for selling, giving away or otherwise distributing alcoholic liquor to the person presenting the document.

(d) (1) No permittee or permittee's agent or employee shall electronically or mechanically record or maintain any information derived from a transaction scan, except the following: (A) The name and date of birth of the person listed on the driver's license or identity card presented by a cardholder; (B) the expiration date and identification number of the driver's license or identity card presented by a cardholder.

(2) No permittee or permittee's agent or employee shall use a transaction scan device for a purpose other than the purposes specified in subsection (c) of this section or subsection (d) of section 53-344, as amended by this act.

(3) No permittee or permittee's agent or employee shall sell or otherwise disseminate the information derived from a transaction scan to any third party for any purpose, including, but not limited to, any marketing, advertising or promotional activities, except that a permittee or permittee's agent or employee may release that information pursuant to a court order.

(4) Nothing in subsection (c) of this section or this subsection relieves a permittee or permittee's agent or employee of any responsibility to comply with any other applicable state or federal laws or rules governing the sale, giving away or other distribution of alcoholic liquor.

(5) Any person who violates this subsection shall be subject to a civil penalty of not more than one thousand dollars.

(e) (1) In any prosecution of a permittee or permittee's agent or employee for selling alcoholic liquor to a minor in violation of subsection (b) of this section, it shall be an affirmative defense that all of the following occurred: (A) A cardholder attempting to purchase or receive alcoholic liquor presented a driver's license or an identity card; (B) a transaction scan of the driver's license or identity card that the cardholder presented indicated that the license or card was valid; and (C) the alcoholic liquor was

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sold, given away or otherwise distributed to the cardholder in reasonable reliance upon the identification presented and the completed transaction scan.

(2) In determining whether a permittee or permittee's agent or employee has proven the affirmative defense provided by subdivision (1) of this subsection, the trier of fact in such prosecution shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a permittee or permittee's agent or employee to exercise reasonable diligence and that the use of a transaction scan device does not excuse a permittee or permittee's agent or employee from exercising such reasonable diligence to determine the following: (A) Whether a person to whom the permittee or permittee's agent or employee sells, gives away or otherwise distributes alcoholic liquor is twenty-one years of age or older; and (B) whether the description and picture appearing on the driver's license or identity card presented by a cardholder is that of the cardholder.

Sec. 2. Section 53-344 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) As used in this section:

(1) "Cardholder" means any person who presents a driver's license or an identity card to a seller or seller's agent or employee, to purchase or receive tobacco from such seller or seller's agent or employee;

(2) "Identity card" means an identification card issued in accordance with the provisions of section 1-1h;

(3) "Transaction scan" means the process by which a seller or seller's agent or employee checks, by means of a transaction scan device, the validity of a driver's license or an identity card; and

(4) "Transaction scan device" means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically

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readable format the information encoded on the magnetic strip or bar code of a driver's license or an identity card.

[(a)] (b) Any person who sells, gives or delivers to any minor under eighteen years of age tobacco, unless the minor is delivering or accepting delivery in [his] such person's capacity as an employee, in any form shall be fined not more than two hundred dollars for the first offense, not more than three hundred fifty dollars for a second offense within an eighteen-month period and not more than five hundred dollars for each subsequent offense within an eighteen-month period.

[(b)] (c) Any person under eighteen years of age who purchases or misrepresents [his] such person's age to purchase tobacco in any form shall be fined not more than fifty dollars for the first offense and not less than fifty dollars nor more than one hundred dollars for each subsequent offense.

(d) (1) A seller or seller's agent or employee may perform a transaction scan to check the validity of a driver's license or identity card presented by a cardholder as a condition for selling, giving away or otherwise distributing tobacco to the cardholder.

(2) If the information deciphered by the transaction scan performed under subdivision (1) of this subsection fails to match the information printed on the driver's license or identity card presented by the cardholder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the seller nor any seller's agent or employee shall sell, give away or otherwise distribute any tobacco to the cardholder.

(3) Subdivision (1) of this subsection does not preclude a seller or seller's agent or employee from using a transaction scan device to check the validity of a document other than a driver's license or an identity card, if the document includes a bar code or magnetic strip that may be scanned by the device, as a condition for selling, giving away or otherwise distributing tobacco to the person presenting the document.

(e) (1) No seller or seller's agent or employee shall electronically or mechanically record or maintain any information derived from a transaction scan, except the following: (A) The name and date of birth of the person listed on the driver's license

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or identity card presented by a cardholder; (B) the expiration date and identification number of the driver's license or identity card presented by a cardholder.

(2) No seller or seller's agent or employee shall use a transaction scan device for a purpose other than the purposes specified in subsection (d) of this section or subsection (c) of section 30-86, as amended by this act.

(3) No seller or seller's agent or employee shall sell or otherwise disseminate the information derived from a transaction scan to any third party, including, but not limited to, selling or otherwise disseminating that information for any marketing, advertising or promotional activities, but a seller or seller's agent or employee may release that information pursuant to a court order.

(4) Nothing in subsection (d) of this section or this subsection relieves a seller or seller's agent or employee of any responsibility to comply with any other applicable state or federal laws or rules governing the sale, giving away or other distribution of tobacco.

(5) Any person who violates this subsection shall be subject to a civil penalty of not more than one thousand dollars.

(f) (1) In any prosecution of a seller or seller's agent or employee for a violation of subsection (b) of this section, it shall be an affirmative defense that all of the following occurred: (A) A cardholder attempting to purchase or receive tobacco presented a driver's license or an identity card; (B) a transaction scan of the driver's license or identity card that the cardholder presented indicated that the license or card was valid; and (C) the tobacco was sold, given away or otherwise distributed to the cardholder in reasonable reliance upon the identification presented and the completed transaction scan.

(2) In determining whether a seller or seller's agent or employee has proven the affirmative defense provided by subdivision (1) of this section, the trier of fact in such prosecution shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a seller or seller's agent or employee

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to exercise reasonable diligence and that the use of a transaction scan device does not excuse a seller or seller's agent or employee from exercising such reasonable diligence to determine the following: (A) Whether a person to whom the seller or seller's agent or employee sells, gives away or otherwise distributes tobacco is eighteen years of age or older; and (B) whether the description and picture appearing on the driver's license or identity card presented by a cardholder is that of the cardholder.

Sec. 3. Subsection (a) of section 30-77 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Any person who, without a permit therefor, except as provided in section 30-37 or subsection (b) of section 12-436, the provisions of which shall not be construed as requiring an individual to be physically present at the point of purchase of alcoholic beverages to import such alcoholic beverages, or contrary to the provisions of this chapter and the regulations of the Department of Consumer Protection with respect to the class of permit held by [him] such person, manufactures or, by sample, by soliciting or procuring orders, or otherwise, sells or delivers, or offers or exposes for sale or delivery, or owns or keeps with intent to sell or deliver, or who ships, transports or imports into this state, any alcoholic liquor, shall be subject to the penalties prescribed in section 30-113; provided nothing in this section shall prohibit any common carrier, warehouseman or other lien holder, or any officer acting under legal process, or any insurance company that acquires the same as the result of fire, flood or water damage, from exercising [his or its] the right of such person or such entity to sell alcoholic liquor under a lien or such process or such acquisition, with the permission of the department. The provisions of this section shall not apply to the delivery to a permittee under this chapter of alcoholic liquor which is legally authorized. The provisions of this section shall not apply to the shipment into this state of ethyl alcohol intended for use or used for scientific, mechanical and industrial uses, for use in hospitals and public institutions, for medicinal purposes in the manufacture of patented, proprietary, medicinal, pharmaceutical, antiseptic, toilet, scientific, chemical, mechanical and industrial preparations or products not sold as a beverage for human consumption, nor to the shipment of wine to be used in the

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manufacture of patented, proprietary or pharmaceutical preparations or products or in the manufacture of fruit preserves. No such shipment shall be made except with the approval of the department and only in such manner as the department prescribes. The department shall notify the Commissioner of Revenue Services of the approval of any such shipment.

Approved June 6, 2001